

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RAUL I. CALDERON,)	4:08CV3128
)	
Petitioner,)	
)	
v.)	MEMORANDUM
)	AND ORDER
DENNIS BAKEWELL,)	
)	
Respondent.)	

This matter is before the court on Petitioner's Motion to Appoint Counsel ([filing no. 8](#)), Motion for Court's Assistance ([filing no. 10](#)), and Motion for Conference Call with the Judge ([filing no. 14](#)). Respondent filed an Objection to Petitioner's Motion to Appoint Counsel. ([Filing No. 9](#).)

“There is neither a constitutional nor statutory right to counsel in habeas proceedings; instead, [appointment] is committed to the discretion of the trial court.” [*McCall v. Benson*, 114 F.3d 754, 756 \(8th Cir. 1997\)](#). As a general rule, counsel will not be appointed unless the case is unusually complex or the petitioner's ability to investigate and articulate the claims is unusually impaired or an evidentiary hearing is required. *See, e.g., Morris v. Dormire*, 217 F.3d 556, 558-59 (8th Cir. 2000), *cert. denied*, 531 U.S. 984 (2000); [*Hoggard v. Purkett*, 29 F.3d 469, 471 \(8th Cir. 1994\)](#) (citations omitted). *See also Rule 8(c) of the Rules Governing Section 2254 Cases in the United States District Courts* (requiring appointment of counsel if an evidentiary hearing is warranted.) The court has carefully reviewed the Petition, Motion to Appoint Counsel, and Objection. The court finds that there is no need for the appointment of counsel at this time.

Also pending are Petitioner's Motion for Court's Assistance ([filing no. 10](#)) and Motion for Conference Call with the Judge ([filing no. 14](#)). In his Motion for Court's Assistance, Petitioner generally argues the merits of his Petition and details his

segregation status. ([Filing No. 10](#).) On August 6, 2008, Respondent filed an Answer, Brief in Support, and State Court Records which address the merits of the Petition. ([Filing Nos. 11, 12, and 13](#).) Pursuant to the court's previous Memorandum and Order, Petitioner has until September 6, 2008 in which to file a Response addressing the merits of his claims. ([Filing No. 6](#).) The Motion for Court's Assistance is therefore denied. However, on the court's own motion, and because of his segregation status, Petitioner shall have an additional 30 days, or until October 6, 2008, to file his Response.

In his Motion for Conference Call with the Judge ([filing no. 14](#)), Petitioner relates his difficulties in prosecuting this matter due to his segregation status. ([Id.](#)) Petitioner also states that "attempts on the Petitioners [sic] life have occurred [sic] in the past" and that he is "far from family and needs someone to talk to." ([Id.](#)) The court has permitted Petitioner an additional 30 days in which to file his Response on the merits of his Petition. In the event that Petitioner needs additional time beyond that due to his segregation status, he should file the appropriate motion. In light of this, the court sees no reason for a conference call on these matters at this time.

However, the court is concerned about Petitioner's statement regarding his safety and past threats on Petitioner's life. At the same time, the court notes that Respondent has submitted Petitioner's disciplinary records and the list of offenses includes dozens of incidents involving assault, possession of weapons, disobeying orders, self-mutilation, and other misconduct. ([Filing No. 9-2, Attach. 1](#); [Filing No. 9-3, Attach. 2](#).) In light of this, Respondent shall investigate Petitioner's claims relating to his safety and shall report to the court regarding that investigation, as set forth below.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Motion to Appoint Counsel ([filing no. 8](#)) is denied.

Respondent's Objection to Motion to Appoint Counsel ([filing no. 9](#)) is granted.

2. Plaintiff's Motion for Court's Assistance ([filing no. 10](#)) is denied.

3. On the court's own motion, Petitioner shall have an additional 30 days, or until October 6, 2008, to file his Response on the merits of his Petition.

4. Petitioner's Motion for Conference Call with the Judge ([filing no. 14](#)) is denied.

5. Respondent shall investigate Petitioner's claim that attempts on his life have been made in the past. No later than September 18, 2008, Respondent shall file a statement regarding his investigation and any steps taken to ensure the safety of Petitioner, if necessary.

August 18, 2008.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge